

Kaur (Migration) [2019] AATA 2030 (11 April 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Ms Amritpal Kaur
CASE NUMBER:	1713639
HOME AFFAIRS REFERENCE(S):	BCC2016/338081
MEMBER:	James Lambie
DATE:	11 April 2019
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 11 April 2019 at 10:12am

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 – Insufficient evidence of relationship – inconsistent evidence – non genuine relationship– Decision under review affirmed

LEGISLATION

Migration Act 1958, ss 5F, 65, 375

Migration Regulations 1994, r 1.15A, Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 22 January 2016 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.221(2)(a) because there was insufficient evidence that Ms Kaur was the spouse or de facto partner of Mr Singh.
4. The applicant appeared before the Tribunal on 17 May 2018 to give evidence and present arguments. The Tribunal also received oral evidence from Mr Singh and Ms Rupinderjit Singh.
5. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issue in the present case is whether Ms Kaur is the spouse or de facto partner of Mr Singh.
8. The couple claim to have met on 12 October 2014 in Phagwara, India, at the home of Ms Kaur's aunt. That was the family home of Ms Rupinderjit (Ruby) Kaur who, as well as being the applicant's first cousin, has been a close friend of the sponsor since 2008 and his housemate in Australia. At the time of their first meeting, Mr Singh had brought some items from Australia that Ruby wanted delivered to her mother. They met subsequently when Mr Singh was about to return to Australia and he was collecting some items to take back for Ruby. The applicant was then still in High School. The sponsor had been an Australian permanent resident since 2013, having first entered Australia on a student visa in 2007. At the second meeting, Mr Singh and the applicant discussed study and work options in Australia.
9. The applicant arrived in Australia on a student visa on 5 July 2015. She was met at the airport by the sponsor and Ruby. She took up residence with Ruby in Nundah. Mr Singh was living in Stafford, a couple of suburbs away. The parties' evidence was that, Ruby being busy with work and organising her permanent residency, Mr Singh helped the applicant to settle in and organise the opening of bank accounts and similar administrative matters. They became engaged on 15 October 2015 and were married, as mentioned above, a few weeks later on 6 December 2015. Following their marriage, they say they have lived together at a number of residences in Stafford, Boondall, Nundah and Taigum. All of these addresses were shared with other people. At their current address in Taigum, they share a

house with Ruby, Ruby's brother Kamaljit, and Kamaljit's wife and two daughters. Kamaljit is apparently the owner of the property.

10. In addition to their oral evidence, the parties submitted a range of documentary material, including form 888 statutory declarations, separate statutory declarations, an affidavit from the applicant's parents, bank statements and correspondence, superannuation statements, a small selection of household bills, a traffic offence notice, photographs and a written submission from their agent. Following the hearing, the parties sought and were granted leave to make supplementary submissions and present additional evidence. That material was received on 15 June. I have had regard to all of this material and, where relevant, have made further observations below.

Whether the parties are in a spouse or de facto relationship

11. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian permanent resident.
12. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

13. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The parties presented a Queensland marriage certificate dated 15 December 2015, showing that they were married at Forest Lake on 6 December 2015. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

14. *Financial aspects of the relationship*

15. In assessing the financial aspects of the relationship, I have considered the joint ownership of assets, any joint liabilities, the extent of pooling of financial resources, any legal obligations owed by the parties inter se and the sharing of day-to-day household expenses.
16. In their agent's written submission and in their oral evidence the parties acknowledge that there are no assets owned jointly. Mr Singh owns a Mazda CX-7 registered and insured in his own name only, purchased through a personal loan in his own name. No material was submitted in relation to the financing, insurance or registration of the vehicle. Their agent's submission was that Mr Singh purchased the vehicle for both of them, but having regard also to the fact that the applicant does not hold a Queensland driver's licence and is not insured to drive it, I can give that submission no weight.

17. The parties claim that they are saving for a deposit to purchase a home and have a target of \$30,000. At the time of the hearing, there was a balance of \$6428.85 in their joint account. However, for the reasons discussed at paragraph 20 below, I give this no weight.
18. There are no liabilities owed by the parties jointly. Their agent submitted that the rent of \$140 per week paid by the applicant for the rental of a room in Kamaljit's house amounts to a joint liability. The only evidence of the arrangement is an undated handwritten note from Kamaljit and his wife that the couple "share the rent" with them at 8 Cooma Court, Taigum. There being no formal lease and no objective evidence as to if or how Mr Singh's liability might arise from this arrangement, I give this submission no weight.
19. I have considered the bank statements and the parties' oral evidence as to the extent of the pooling of their financial resources. At the time of the hearing, the applicant was working as packer and process worker at Youfoodz in Virginia, making approximately \$1000 to \$1200 per week. Mr Singh works as a chef and makes approximately \$850 per week.
20. Consistent with the parties' evidence and submissions, the applicant makes rent payments of \$140 per week. Inconsistently with their evidence, Mr Singh makes separate payments, described in his bank statements as 'rent', of \$150 (from 27 February 2018, \$155) per week. The destination of these funds is not stated in his evidence or in his bank statements. Subject to my comments in relation to the joint account at paragraph 20, an analysis of the bank statements provided by the parties does not indicate the pooling of financial resources to any extent. The parties use different supermarkets, are members of different gyms, frequent different restaurants and fast food outlets, and have separate telephone and online entertainment accounts. It is not at all apparent from their expenditure patterns where their lives might intersect, let alone indicate the maintenance of a joint household. The parties' supplementary submission is to the effect that Mr Singh's MasterCard account is used for joint expenses when the parties are going out as a couple. There is nothing in the other evidence to support this and, in fact, the spending profile suggests that the credit card is used interchangeably with his access account (save for rent payments). I therefore reject the supplementary submission.
21. The parties submitted statements for a joint account for the period 22 December 2017 to 26 April 2018. The account balance at 22 December 2017 was 20 cents. The balance at 26 April 2018 was \$6428.85. However, \$6425.10 of this was deposited in the final 24 days, either from the applicant's personal account or by direct credits from undisclosed sources. For the remainder of the period, the account seems to have been principally used by the applicant to transfer funds between her personal account and another of his accounts (the existence of which was only disclosed in the supplementary submission). It was also briefly used for the payment and refund of fees relating to her brother's unsuccessful visa application. Some money was paid through the account to Mr Singh's credit card account. I give this account no weight as evidence of the pooling of financial resources and consider that the final balance was contrived for the purpose of the hearing. The supplementary submission did not attach any updated statements for the joint account and I infer that updated information would not assist their application.
22. The applicant has nominated Mr Singh as the beneficiary of her superannuation account. Mr Singh has made no reciprocal arrangement. As the nominated beneficiary can be changed at any time, and in light of the other financial evidence, I give this no weight.
23. On the basis of the matters outlined in paragraph 19 and 20, I cannot be satisfied that the parties have pooled their financial resources, assumed any legal obligations inter se (including that of any residential lease) or share their day-to-day household expenses to any, or any appreciable, extent.

24. *The nature of the household*

25. In assessing the nature of the household, I have considered any joint responsibility for the care and support of children, the parties' living arrangements, and any sharing of housework.
26. The parties' statutory declarations (which are expressed, mutatis mutandis, in identical terms) claim that they live at Kamaljit's house and only need to pay \$140 per week for rent and groceries. They say that they split utility and electricity bills in equal parts and transfer the amount they need to pay along with the rent. They also claim that they take some responsibility for the care of the applicant's nieces, aged 12 and 6. In terms of the daily routine, it is claimed that the applicant works from 6pm to 5am and that Mr Singh leaves for work at 9am. The applicant makes breakfast for the couple, which they have together. The applicant then sleeps until about 2pm. She cooks and does some cleaning until it is time for her to go to work again. They claim that Mr Singh helps with the housework when he has time: he helps in the laundry, chops vegetables, maintains the garden and sometimes washes the dishes. On his days off, he sometimes cooks for the couple.
27. The couple do not have children of their own. Their evidence is that they have discussed having children when they become financially stable. I give this factor no particular weight.
28. The parties and Ruby gave oral evidence as to the couple's living arrangements. The applicant's evidence was consistent with her statutory declaration. Mr Singh's evidence was that it was not routine to have breakfast together and that the applicant does not really have breakfast. Ruby's evidence was that the couple have breakfast together routinely. If the evidence of the parties as to their work hours is accepted, the period between 5am and 9am is the only time they spend together during the week. Due to the inconsistency of the evidence of the applicant and Mr Singh, I cannot give any weight to what evidence there is of a household routine.
29. The evidence as to housework, stated in the identical statutory declarations and repeated at the hearing, is vague and not supported by any documentary material that might be expected (for instance, photographs of Mr Singh gardening). An affidavit from Kamaljit Singh Bains, part of the supplementary submissions, provided no useful additional information.
30. I give some very limited weight to the parties' and Ruby's testimony.
31. Any weight I have given to the evidence of the nature of the household overall is discounted by the objective evidence of Mr Singh's other rent payments and the matters described in paragraph 20, which are much more suggestive of the parties leading separate lives.

32. *The social aspects of the relationship*

33. In assessing the social aspects of the relationship, I have considered whether the parties represent themselves to other people as being married to each other, the opinion of friends and acquaintances about the nature of the relationship and any basis on which the parties plan and undertake joint social activities.
34. One aspect of the relationship, which the parties claim to be a complicating factor, is the difference in their social caste. Mr Singh's caste is Hindu Sikh Khantri and the applicant's is Jatt. Their evidence is that their marriage is accepted by the applicant's parents (who have sworn a joint affidavit to that effect) but that Mr Singh has kept the marriage secret from his mother, who they believe would not approve. Accordingly, they say, they have had to restrict the disclosure of their marriage to a small number of people for fear that it might be relayed

to Mr Singh's mother. The result is that there is limited material upon which I can assess the social aspects of the relationship.

35. In addition to the oral and written evidence of the parties and Ruby, I have had regard to the statutory declarations of Kamaljit Singh Bains, Kamaldip Kaur Bains (the wife of Kamaljit), Pardip Saili, Harjas Kaur Dhaliwal, Malkit Singh and Manbrinder Kaur. All but Ms Dhaliwal attended the wedding and make reference to the caste disparity. All claim that the relationship is genuine. I give this material some weight.
36. The photographs submitted by the parties are surprisingly few in number. Aside from the very small number of wedding photographs, there are photographs that seem to encompass no more than four occasions. These show the couple alone or with their household. The parties' evidence – that they have lost or damaged a large number of phones over the three years they have been together – is not strikingly plausible and does not explain the absence of photographs from other sources or those that might have been stored or posted online.
37. The evidence of the parties is that they are quite socially active, Mr Singh particularly so. No evidence was tendered from anyone who knew Mr Singh independently of the relationship with the applicant. Mr Singh's own evidence is that only one of his friends attended the wedding. No evidence from that person was submitted.
38. The parties submitted a small number of Facebook screenshots purporting to show them engaged in a number of social activities as a couple. I note that these do not show the parties as married to each other, perhaps for fear of them being seen by Mr Singh's friends and relatives in India. In any event, they occupy a very short time frame and are not unequivocal as to the nature of the relationship. I can give them very little weight.
39. The evidence of the parties and Ruby was strangely inconsistent as one detail of the marriage: the ring, which is evidence of a marriage to the world at large. The applicant's evidence was that she does not wear a ring and that rings were not exchanged at the wedding. There was no engagement ring. Mr Singh's evidence was that rings were exchanged at the wedding, but there was no engagement ring. Ruby's evidence was that the applicant received an engagement ring of square cut diamonds. There are no rings on either party in any of the photographs. Neither party was wearing a ring at the hearing. This detail is small but would be expected to be remembered well and consistently if the marriage was genuine. The fanciful detail in Ruby's evidence suggests to me that I should treat all her evidence with caution.
40. The applicant sought to clarify her evidence by way of a statutory declaration lodged with the supplementary submission. She claimed to have been confused by the questions at the hearing and sought to clarify that Mr Singh did give her an engagement ring after the proposal and that wedding rings were exchanged at the wedding ceremony. The evidence as to the engagement ring is now in conflict with Mr Singh's. The supplementary submission included a letter from the marriage celebrant to the effect that rings were exchanged at the ceremony. The photographs and the parties own presentation at the hearing contradict these statements. The applicant's evidence that rings are an occupational hazard in the parties' workplaces might explain their not wearing them habitually, but this does not cure the defects in their evidence. The supplementary submission, in my view, tends to further undermine their credibility.
41. Finally, I reiterate the matters discussed at paragraph 19. The objective evidence of the social aspects of the relationship is weak and tenuous, while tending to suggest the maintenance of separate lives (particularly as regards the recorded social and entertainment expenses) is comparatively strong.

42. *The nature of the parties' commitment to each other*

43. In assessing the nature of the parties' commitment to each other, I have considered the duration of the relationship, the length of time the parties have lived together, the degree of companionship and emotional support they draw from each other, and whether they see the relationship as long-term.
44. The development of the couple's relationship is described in paragraphs 8 and 9 above. The development of the relationship was rapid: only three months elapsing from the applicant's arrival to the engagement. The applicant and Mr Singh both described the marriage proposal as 'casual' and 'not romantic'. Mr Singh candidly admitted that the parties discussed it in terms of it being necessary for the applicant's long-term residency in Australia. The wedding took place only some six weeks after the proposal. There was no honeymoon.
45. The parties claim to have lived together consistently since their marriage, save for two periods when Mr Singh returned to India to see his mother and a one week visit he made to New Zealand. Mr Singh's trip to India took place between 9 May and 15 June 2016. The applicant's oral evidence was that it was a visit of only three weeks, which is clearly incorrect. Mr Singh's evidence was that the sole purpose of the trip was to visit his ailing mother. The parties admit that they did not communicate in any way while Mr Singh was in India. For a couple that had been married only 6 months, I find this incredible. Their explanation was that, owing to the need to conceal the marriage from Mr Singh's mother, they could not take the risk of having their communications overheard. With the availability of text messages and the many opportunities that must have existed to communicate, the parties' narrative and reasons are simply implausible. Mr Singh sought to bolster his evidence with a statutory declaration lodged with the supplementary submission to the effect that he used his mother's mobile phone while he was in India, did not have international roaming activated on his own phone and, owing to his using a 'postpaid' (presumably he meant prepaid) telephone account, no records are available. None of this evidence strikes me as plausible in view of the many cheap and easy communications alternatives available in 2016, especially with a new bride waiting at home. The unavailability of records, in my view, is all of a piece with the lack of photographs and other evidence that might otherwise be expected to exist.
46. I note that the parties did not enter any of their telephone records into evidence, but both volunteered that their work commitments preclude any frequent communications. Even if this is correct, there are many occasions on which the need for routine and mundane communications between a couple will arise and evidence of this would have assisted their application. I infer from the absence of this material that the telephone records would have damaged their case.
47. Aside from some Facebook 'check-ins' at the Gold Coast and Byron Bay (these being seemingly day-trips and in some cases as part of a larger party), there is no evidence that the parties have taken any holidays or other trips together. In these circumstances, Mr Singh's trip alone to New Zealand is curious. Both said in their oral evidence that it was a spur of the moment decision in order for Mr Singh to see a high school friend and that the applicant's travel was complicated by her visa status. This may be so, but in view of the lack of evidence of any other couple activities, and the existence of other evidence suggesting they lead separate lives, their explanation is not compelling. Mr Singh's 30th birthday fell in June 2017: there is no evidence of any celebration of this and Mr Singh's account is that he went out drinking with friends. He did not mention the applicant. The parties gave evidence that Mr Singh supported the applicant through a bout of depression in 2016 (no dates are given), for which there is no medical or other objective evidence, and which Ruby did not mention. The evidence of companionship and mutual support rests entirely on their own

testimony and the vague assertions of their witnesses. There is a marked absence of the objective evidence one might expect in these circumstances: gifts, messages, photographs, telephone records, etc. As I have noted at various points above, the reasons offered for their absence are unconvincing, the more so when they are compounded.

48. Both parties, and their witnesses, attested that they see the relationship as long-term. I asked them about their plans for the future. Both mentioned saving for a house deposit through their joint account which, as I have noted at paragraph 20, is not supported by the evidence. The parties, although they included bank correspondence relating to the applicant's failed credit card application, included no material indicating that any inquiry had been made of their bank as to the size of the loan or the deposit amount that might be required. While the parties were consistent that the applicant intends someday to study nursing, they were not at all consistent as to Mr Singh's goals. The applicant's oral evidence was that Mr Singh intends to join the army (for which there are likely to be limited opportunities given his age and citizenship status). Mr Singh did not mention this and said that he had no particular career plans at present. Ruby's evidence was that he intends to undertake a bachelor's degree. The overall impression is that their evidence was improvised to cover for the fact that communication amongst them is much less than might be expected from a couple in a household together.
49. The totality of the material before the Tribunal is quite inadequate to satisfy me that the couple are in a genuine relationship. Of the financial, household, social and commitment factors, none of the evidence was convincing as to the existence of a spousal relationship and much was strongly suggestive to the contrary. I therefore cannot be satisfied that the parties have a mutual commitment to shared life to the exclusion of others, nor that theirs is a genuine and continuing relationship, nor that they live together on a permanent basis.
50. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made or at the time of this decision.
51. Therefore the applicant does not meet cl.820.211(2)(a) or cl.820.221. I have considered the alternative criteria in cl.820.211(7), 820.211(8), 820.211(9) and 820.221(2) and am satisfied that none are met.
52. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

53. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

James Lambie
Senior Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).